

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SAIM SARWAR,

Plaintiff,

v.

Civil Action No. 20-cv-12744

BIPIN-SETH INC.,

Defendant.

ORDER

John Michael Vazquez, U.S.D.J.

THIS MATTER comes before the Court by way of Plaintiff's unopposed motion for default judgment as to Defendant pursuant to Fed. R. Civ. P. 55(b), D.E. 5; and it

APPEARING that Rule 55(b) authorizes courts to enter a default judgment against a properly served defendant who fails to file a timely responsive pleading. Fed. R. Civ. P. 55(b). But even when a party is in default "the other side is not entitled to the entry of default judgment as of right, and the entry of such a judgment is left primarily to the discretion of the district court." *Sanchez v. Franzzano*, No. 15-2316 (KSH)(CLW), 2016 WL 2892551, at *1 (D.N.J. May 12, 2016) (quoting *Ramada Worldwide Inc. v. Abel Lodging, LLC*, No. 14-2683, 2014 WL 5361914, at *1 (D.N.J. Oct. 21, 2014)); and it further

APPEARING that Plaintiff sues Defendant on his behalf and for "all other individuals similarly situated" for "[i]njunctive [r]elief, and attorney's fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq. ("ADA")." D.E. 1 at 1. Generally, Plaintiff claims that various websites Defendant uses for accepting reservations at its

hotel violate regulations promulgated under the ADA – specifically, 28 C.F.R. § 36.302(e) *see id.* ¶¶ 10(a)-(h) – which set forth requirements for those subject to the regulations “with respect to reservations made by any means.” *Id.* ¶ 7. Plaintiff further alleges that he and “all others similarly situated,” *id.* ¶ 17, have suffered “direct and indirect injury as a result of the Defendant’s discrimination until the Defendant is compelled to modify its websites to comply with the . . . ADA.” *Id.* ¶ 14, and it further

APPEARING that since moving for default judgment, Plaintiff filed an Amended Complaint against Defendant on January 4, 2021. *See D.E. 6.* And “an amended complaint supersedes the original version” and renders the Clerk’s entry of default as to Defendant “moot since the amended complaint superseded the original complaint.” *Auto. Rentals, Inc. v. Bama Commercial Leasing LLC*, No. 117CV3877NLHWMW, 2018 WL 3159852, at *1 (D.N.J. Mar. 9, 2018) (citing *Enigwe v. Gainey*, No. CIV.A. 10-684, 2012 WL 213510, at *3 (E.D. Pa. Jan. 23, 2012) (“The filing of the Second Amended Complaint rendered the earlier Amended Complaint a nullity . . . and [plaintiff’s] request for an entry of default by [defendant] as to the Amended Complaint became moot.” (internal citation omitted)); therefore

For the foregoing reasons and for good cause shown

IT IS on this 1st day of February, 2021, hereby

ORDERED that Plaintiff’s motion for default judgment, D.E. 5, as to Defendant is **DENIED without prejudice**; and it is further

ORDERED that the Clerk of the Court’s entry of default against Defendant is hereby vacated.



John Michael Vazquez, U.S.D.J.